

Exhibit B

AMY B. HIRSCH
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re: SIPA LIQUIDATION

BERNARD L. MADOFF INVESTMENT No. 08-01789(BRL)
SECURITIES LLC,

(Substantively
Consolidated)

Debtor.

-----X
IRVING H. PICARD, Trustee of the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv. Pro. No.
vs. 09-01182(BRL)

J. EZRA MERKIN, GABRIEL
CAPITAL, L.P., ARIEL FUND LTD.,
ASCOT PARTNERS, L.P., GABRIEL
CAPITAL CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION OF AMY B. HIRSCH
New York, New York
June 16, 2015

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 94520

1 AMY B. HIRSCH

2 the transfers between and among the Defendant
3 Funds and the management company. That's what
4 it relates to.

5 Q. And are you able to answer my question
6 as to whether that relates in any way to the due
7 diligence performed by Merkin, GCC, or the
8 Defendant Funds on Madoff or Madoff securities?

9 A. I'm only able to tell you what my
10 opinion is and what I've been asked to opine on,
11 and the opinions that are set forth in here are
12 regarding the transfers and appropriateness
13 between and among the Defendant Funds and the
14 management company.

15 Q. And you perform due diligence for a
16 living, right, ma'am?

17 A. Yes, I do.

18 Q. And you've been doing that for 20
19 years?

20 A. Longer.

21 Q. Thirty years?

22 A. A while, yes.

23 Q. At least 20?

24 A. At least 20.

25 Q. And you consider yourself good at your

1 AMY B. HIRSCH

2 job?

3 A. I would hope that I'm good at my job.

4 Q. Do you consider yourself an expert on
5 due diligence?

6 A. I have deep expertise in due
7 diligence.

8 Q. So are you able to tell me whether
9 your Opinion II relates in any way to the due
10 diligence performed by Merkin, GCC, or the
11 Defendant Funds on Madoff or Madoff securities?

12 A. I am only able to tell you what the
13 opinion is that I was asked to provide, which is
14 in this report, and that relates to accounting
15 and bookkeeping procedures and the impact of
16 transfers.

17 Q. And you're not able to tell me one way
18 or the other whether it relates to due
19 diligence; is that right, ma'am?

20 MS. HOANG: Objection.

21 A. At this time, I'm not prepared to give
22 an opinion, nor was I asked to give an opinion,
23 on the relevance of due diligence to this
24 particular opinion. This opinion, again, is
25 only regarding the transfers between the

1 AMY B. HIRSCH

2 Defendant Funds and the management company.

3 Q. And likewise, you're not able to tell
4 me one way or the other whether your Opinion I
5 relates in any way to the due diligence
6 performed by Merkin, GCC, or the Defendant Funds
7 on Madoff or Madoff securities, right?

8 A. Again, it's --

9 MS. HOANG: Objection.

10 Go ahead.

11 A. I'm sorry. Again, it's really -- it's
12 only related to the opinion I was asked to give,
13 which is on the transfers between funds.

14 Q. And you can't tell me, despite your
15 experience performing due diligence, you can't
16 tell me one way or the other whether Opinion I
17 relates in any way to the due diligence
18 performed by Merkin, GCC, or the Defendant Funds
19 on Madoff or Madoff securities?

20 A. I'm --

21 MS. HOANG: Objection.

22 Just give me a second.

23 THE WITNESS: I'm sorry.

24 I'm not prepared to give an opinion on
25 that. I was not asked to provide an opinion

1 AMY B. HIRSCH

2 on that.

3 BY MR. STEINER:

4 Q. And you were not asked to provide an
5 opinion on the adequacy of the diligence -- of
6 the due diligence performed by Merkin, GCC, or
7 the Defendant Funds on Madoff or Madoff
8 securities, correct?

9 A. Once again, all the opinions I was
10 asked to give are in my report that's in front
11 of us.

12 Q. And the two opinions you were asked to
13 give don't mention the words "due diligence,"
14 correct?

15 A. They do not mention the words "due
16 diligence," that is correct.

17 Q. And you have not performed -- you have
18 not, in connection with your work on this
19 matter, formed a professional opinion as to the
20 adequacy of the due diligence performed by
21 Merkin, GCC, or the Defendant Funds on Madoff or
22 Madoff securities, correct?

23 MS. HOANG: Objection to form.

24 A. I have formed the opinions with
25 respect to the transfers that took place in the

1 AMY B. HIRSCH

2 A. Uh-huh.

3 Q. And this is your CV; is that right?

4 A. Yes, sir.

5 Q. And this was current as of March 20
6 when you issued your report?

7 A. It was current as of then, yes, that's
8 correct.

9 Q. And is it still correct as of today,
10 or are there any updates that you would need to
11 make with respect to the CV?

12 A. I would make one correction. Well,
13 one thing has changed since this was issued in
14 that I'm no longer a member of the RD Legal
15 Funding Investment Committee.

16 Q. And why is that?

17 A. I resigned in April.

18 Q. Was there a reason that you resigned?

19 A. Just business reasons.

20 Q. So you have been, since 1996, a -- the
21 sole owner of Paradigm Consulting Services; is
22 that right?

23 A. Yes, sir.

24 Q. And how big a company is Paradigm
25 Consulting Services?

1 AMY B. HIRSCH

2 A. Right now, as of today, it is a few
3 people.

4 Q. So, aside from yourself, how many
5 other employees are there?

6 A. There are two other.

7 Q. And are they -- are both of those
8 other two junior to you or --

9 A. Yes.

10 Q. -- or are they other partners of
11 yours?

12 A. There are no other partners.

13 Q. Have you -- at its biggest, how big
14 was Paradigm?

15 A. At its biggest, it was between 17 and
16 20 people.

17 Q. What is the business of Paradigm
18 today?

19 A. The business of Paradigm is to advise
20 institutional investors on alternative
21 investments.

22 Q. And what type of work does Paradigm do
23 for those institutional investors?

24 A. It varies based on the need of the
25 investor.

1 AMY B. HIRSCH

2 Q. What's the range of services that
3 Paradigm provides?

4 A. The range of services would be
5 anything from due diligence to portfolio
6 construction and monitoring to managing assets.

7 Q. And does Paradigm today manage assets
8 for any institutional --

9 A. No, we do not.

10 Q. -- investors?

11 A. Not currently.

12 MS. HOANG: I just want to direct the
13 witness to let Mr. Steiner complete his a
14 question before you start.

15 THE WITNESS: I'm sorry.

16 BY MR. STEINER:

17 Q. Now, during what time period -- I
18 think you said, at its biggest, it was 17 to 20
19 people.

20 During what timeframe was that?

21 A. That was probably between 2000 and
22 2008 or '09.

23 Q. And what was the reason for the
24 reduction in the size of Paradigm?

25 A. Well, we stopped managing large assets

1 AMY B. HIRSCH

2 in 2008 or '09.

3 Q. Why was that?

4 A. Our -- we ran a fund that allocated to
5 managers that was for a large North American
6 pension plan, and the tax rule changed, so they
7 repatriated their funds back. So, as we gave
8 them back their assets, we didn't need as much
9 staff.

10 Q. So when you ran -- it was roughly a
11 billion-dollar portfolio; is that right?

12 A. It was, yes.

13 Q. And so when you ran that fund of
14 funds, it was essentially a single investor fund
15 of funds?

16 A. That was, yes.

17 Q. And who was that for?

18 A. That was for a large North American
19 pension plan.

20 Q. Can you identify who that was for?

21 A. I cannot. I cannot.

22 Q. When you made -- and you were the
23 chief investment officer --

24 A. Yes.

25 Q. -- of Paradigm running that fund; is

1 AMY B. HIRSCH

2 that right?

3 A. Yes, I was.

4 Q. And then it says on your CV that that
5 fund had investments in approximately 45
6 different hedge funds; is that right?

7 A. At one point, yes.

8 Q. And is that the largest number that
9 the billion dollars was allocated to, or is that
10 the total number of hedge funds including some
11 that you would come out of and go into a
12 different fund?

13 MS. HOANG: Objection.

14 A. I'm sorry, could you clarify that?

15 Q. Sure. Was it at its biggest there
16 were 45 different investments at any given time,
17 or that was the total of the number of
18 investments during a six- or seven-year period?

19 A. No, you're --

20 MS. HOANG: Same objection.

21 Go ahead.

22 A. At its biggest, it was allocated to 45
23 managers.

24 Q. And did -- did any of those 45
25 managers have investments with Madoff?

1 AMY B. HIRSCH

2 A. No.

3 Q. Did any of those 45 different managers
4 involve any of the Defendant Funds?

5 A. No.

6 Q. Who was responsible for making the
7 decision to invest with a particular manager?

8 A. Ultimately, it was myself.

9 Q. Who was responsible for conducting the
10 due diligence in connection with any potential
11 investment?

12 A. It could have been any number of staff
13 that were in the Due Diligence Team.

14 Q. If you could turn to the next page of
15 your -- of your CV, you have Case Experience, do
16 you see that?

17 A. Yes. Uh-huh.

18 Q. You say, "I have been retained as an
19 expert witness in the following matters," and
20 you list three?

21 A. Yes, sir.

22 Q. Do you see that?

23 Now, I'm going to guess correctly that
24 the one time that you testified in deposition as
25 an expert in 2010 in New Jersey, did that relate

1 AMY B. HIRSCH

2 Q. Sure.

3 A. -- appendix.

4 It doesn't seem to be in my Documents
5 Considered list, so I would say that if -- since
6 everything that I did consider is here, it would
7 not have been.

8 Q. Now, if you turn to paragraph 4 of
9 your report, the -- you talk about due diligence
10 that you performed in 1995 on the Ariel Fund.

11 Do you see that?

12 A. Yes, sir.

13 Q. And so that was prior to the creation
14 of Paradigm, is that right?

15 A. No, Paradigm was created in 1994 as an
16 LDC. In 1996, it became my company, and it was,
17 actually, LDC was put in mothballs and Paradigm
18 Consulting Services was -- was formed.

19 So, beginning in January of '96 is
20 when it's Paradigm Consulting Services. Prior
21 to that, it would have been Paradigm LDC, in
22 which I did have partners.

23 Q. What's LDC?

24 A. Limited duration company.

25 Q. The -- so the due diligence that you

1 AMY B. HIRSCH

2 performed in 1995, was that in connection with
3 Paradigm or was that in connection with Link?

4 A. That was in connection with Paradigm
5 LDC.

6 Q. And what client was that on behalf of?

7 A. That was actually on behalf of a
8 client's client. So I don't have the name of
9 the client.

10 Q. So you don't know who it was who
11 invested in Ariel that you were --

12 A. Well, it was a custodial --

13 I'm sorry. Go ahead, continue.

14 Q. -- that you were performing due
15 diligence for?

16 A. It was a custodial relationship, so it
17 would have been for my client, ultimately, you
18 know, but I don't know who was beneath it.

19 Q. And you say that you recommend the
20 client fully redeem their investment. Do you
21 see that?

22 A. Yes.

23 Q. Do you know whether the client in fact
24 redeemed?

25 A. I do, actually.

1 AMY B. HIRSCH

2 Q. Okay. And what did they do?

3 A. They redeemed.

4 Q. But you don't know who the client is?

5 A. I don't know the name of the
6 underlying custodianship, no.

7 Q. In paragraph 5, you talk about due
8 diligence that you conducted on behalf of an
9 investor in the Tremont Fund, do you see that?

10 A. American Master Broad Market Prime
11 Fund, yes.

12 Q. And that Tremont Fund, in turn,
13 invested with Madoff?

14 A. Yes.

15 Q. And you knew that at the time?

16 A. I did, yes.

17 Q. And it says you recommended the
18 investor redeem?

19 A. That's correct.

20 Q. Okay. Do you know whether that
21 investor redeemed?

22 A. Yes, they did.

23 Q. Okay. Which investor was that?

24 A. It was a -- a foundation.

25 Q. What was the name of the foundation?

1 AMY B. HIRSCH

2 A. I don't believe that I can discuss the
3 names of my clients due to confidentiality.

4 Q. Well, did you have an engagement with
5 the client that imposed the confidentiality
6 obligation?

7 A. I did, yes.

8 Q. You have a written letter that imposed
9 that?

10 A. I have confidentiality agreements with
11 most of my clients.

12 Q. How big was the investment?

13 A. I don't recall exactly, but I know it
14 was in excess of \$10 million.

15 (Hirsch Exhibit 4, a Letter from
16 Paradigm L.P. to Ezra Merkin with attached
17 notes and preliminary draft, marked for
18 identification, as of this date.)

19 BY MR. STEINER:

20 Q. Ms. Hirsch, the reporter has handed
21 you a document marked Hirsch Exhibit 4. Do you
22 see that?

23 A. I do.

24 Q. And this is the due diligence report
25 that -- well, this is -- the first page is a

1 AMY B. HIRSCH

2 letter to Mr. Merkin, and then the following
3 three pages are your notes and preliminary draft
4 of a due diligence report; is that right?

5 A. They are the observations and
6 preliminary report, yes.

7 Q. Aside from -- and ABH, that's you?

8 A. That's me.

9 Q. Aside from this preliminary report on
10 Ariel, was there any other work that was
11 performed in connection with the due diligence
12 on Ariel that your firm performed?

13 A. No.

14 Q. Why not?

15 A. As I recall, we were never given the
16 materials to continue or conduct the full due
17 diligence.

18 Q. What else would one of your due
19 diligence reports typically contain?

20 A. Well, this is not --

21 MS. HOANG: Objection.

22 A. I'm sorry. This is not a due
23 diligence report. This is just the beginning of
24 a -- of a draft.

25 A full due diligence report would

1 AMY B. HIRSCH

2 contain an analysis of the firm and its
3 personnel, all of the products that it has under
4 management, it would contain a review of the
5 strategy in its totality and a review of the
6 underlying investments in the strategy to the
7 best of our -- of our knowledge.

8 It would contain an analysis of risk
9 management, portfolio construction, execution,
10 risk management, operational efficiencies and
11 insufficiencies.

12 It would contain a complete
13 performance analysis and peer analysis, if
14 appropriate. It would contain a variety of
15 different correlation analysis and market
16 analysis versus the performance.

17 Those are just some of the things that
18 a full report would contain.

19 Q. Would it -- are you familiar with the
20 term "reverse engineering"?

21 A. Yes, I'm familiar with it.

22 Q. And would -- when you perform due
23 diligence, do you do reverse engineering of a
24 strategy?

25 A. Not necessarily.

1 AMY B. HIRSCH

2 Q. Why not?

3 A. We don't necessarily need to do
4 reverse engineering because you can find out --
5 there are different ways to get factors and
6 correlation analysis done to find out what
7 footprints are. So in rare cases do we do --
8 will we do, or have to do, reverse engineering.

9 Q. That's -- reverse engineering is
10 something that you do rarely?

11 MS. HOANG: Objection.

12 A. We -- we have not found a reason to,
13 to do it. So it's not something that is done on
14 a standard basis, no.

15 Q. As part of your standard due
16 diligence, do you try and do a quantitative
17 breakdown of the sources of a fund's return?

18 A. Yes.

19 Q. How do you do that?

20 A. Well, it's done either through a
21 correlation analysis, factor analysis. There
22 are a number of ways to achieve it. There's a
23 breakdown of beta and alpha analysis,
24 footprinting, et cetera.

25 Q. What's footprinting?

1 AMY B. HIRSCH

2 A. Footprinting is -- is similar to
3 factor analysis. You're trying to ascertain,
4 based on a benchmark, where you're seeing the
5 greatest correlation and where you're seeing
6 footprints in the performance.

7 So if you take a short seller, for
8 example, and you do an analysis of the market
9 and you're seeing a lot of alpha in a bull
10 market, you know that there's something, you
11 know, very wrong, because he's a short seller
12 and it's a bull market. So you're looking for
13 where -- where the manager actually is placing
14 their bets.

15 Q. And with respect to the work that you
16 did on the Tremont Fund, was that a -- did you
17 do a complete due diligence analysis of the
18 Tremont Fund?

19 A. It was not necessary, no. We did an
20 analysis of performance and we reviewed the
21 document that we were given, but we never got
22 the information that we needed to do a complete
23 due diligence.

24 Q. And when you did that work in 2003,
25 you certainly didn't identify that Mr. Madoff

1 AMY B. HIRSCH

2 was running a Ponzi scheme, correct?

3 A. In 2003, we were doing the due
4 diligence to ascertain whether the investment
5 was appropriate or not for the investor, and
6 based on the information we got from Tremont, we
7 decided that we would issue a full redemption.

8 Q. And your conclusion with respect to
9 Tremont was that, although it could return
10 somewhere around 10 percent a year to investors,
11 the risks outweighed the potential returns; is
12 that right?

13 A. If I could see that report, I believe
14 in its -- in general terms, yes, that's what
15 it -- that's what it said.

16 Q. And --

17 A. That's in a written report.

18 Q. And you certainly didn't tell your
19 client with respect to Tremont that you believed
20 that Mr. Madoff was running a Ponzi scheme,
21 correct?

22 A. I verbally told my client that I did
23 not believe that this -- the returns were --
24 were real.

25 Q. But you didn't write that in your

1 AMY B. HIRSCH

2 report?

3 A. No.

4 Q. So why did you not write that in your
5 report?

6 A. The report is going -- because the
7 report, unfortunately, is sometimes e-mailed
8 around. So we are very careful with what we
9 write in our reports for -- for the fact that if
10 you don't have precise proof of something, you
11 can be -- you don't want that information out
12 there.

13 Q. So your reports are sometimes not a
14 complete reflection of your opinions?

15 A. The recommendations -- the --

16 MS. HOANG: Objection.

17 Let him finish and then...

18 Q. The reports sometimes are not a
19 complete reflection of your opinions?

20 MS. HOANG: Objection.

21 A. The recommendation is complete. The
22 object of the due diligence is to get to the
23 recommendation, and the recommendation is in
24 fact complete.

25 Q. Well, did you believe in 2003 that the

1 AMY B. HIRSCH

2 A. No, I believe I said that it could,
3 but the -- but it was problematic because the
4 prospectus didn't name the manager so they could
5 change the manager at any time, and so you can't
6 make a full recommendation if the manager has
7 changed. So it could have returned 10 percent,
8 it's possible, but our recommendation is based
9 on probability, not possibility.

10 MR. STEINER: Why don't we take a
11 break.

12 THE VIDEOGRAPHER: The time is 2:02
13 p.m. We're going off the record.

14 (Recess.)

15 THE VIDEOGRAPHER: The time is 2:23
16 p.m. We're back on the record, video number
17 2.

18 BY MR. STEINER:

19 Q. Ms. Hirsch, with respect to your
20 Opinion I on page 2 to 3 of your report?

21 A. Yes, sir.

22 Q. Now, I take it this is your statement
23 of the general structure in the fund industry as
24 opposed to anything specific to the Defendant
25 Funds; is that correct?

1 AMY B. HIRSCH

2 A. Yes, that's correct.

3 Q. And then in the section of your
4 report -- I guess it's Section 5 of your report
5 is your explanation of Opinion No. I; is that
6 right?

7 A. And what page would that be, sir?

8 Q. It starts on page 9 and goes to page
9 29.

10 A. Yes.

11 Q. And in that explanation of Opinion No.
12 I, there's no -- you don't make any attempt to
13 apply that in -- within Opinion I to any of the
14 Defendant Funds; is that correct?

15 MS. HOANG: Objection to form.

16 Go ahead.

17 A. This is -- this is a general
18 discussion with regard to industry customs and
19 practices, and I believe that in Opinion II I
20 speak specifically about the Defendant Funds.

21 Q. Right. So Opinion I doesn't speak
22 specifically to the Defendant Funds, correct?

23 A. Opinion I speaks to industry standards
24 and practices, so yes.

25 Q. And you're not a lawyer, right, ma'am?

1 AMY B. HIRSCH

2 you would have specific regulatory requirements.

3 If you are registered with the SEC, you would

4 have --

5 Is that what you mean by "included" in
6 that?

7 Q. Well, what I'm asking is, in your
8 Opinion I, are you offering an opinion as to the
9 requirements of, whether it's the CFTC or the
10 SEC or any state where an investment fund
11 manager may operate, are you including any of
12 that in your discussion with respect to Opinion
13 I?

14 A. I'm not offering --

15 MS. HOANG: Objection.

16 Just give me a second.

17 Objection.

18 Go ahead.

19 A. I'm not offering a legal opinion in
20 any of this report. I'm offering an opinion
21 with respect to industry custom and practices
22 between the time period of 1998 and 2008,
23 basically.

24 Q. And do you have an understanding of
25 any relationship between legal requirements and

1 AMY B. HIRSCH

2 industry customs?

3 A. "Relationship" meaning what,
4 specifically?

5 Q. As an example, would you agree with me
6 if there's any conflict between a law, rule, or
7 regulation and what you describe as an industry
8 custom, that the legal requirement would trump
9 what you have described as an industry custom?

10 MS. HOANG: Objection.

11 A. Well, again, I'm not a lawyer, so I
12 can't answer that question the way you have
13 asked it. I believe that fiduciary
14 responsibility trumps everything else, and most
15 of the codes that have been created are based on
16 acting as a good fiduciary, which I, you know,
17 if you are -- if you are paid to look over the
18 assets of someone else, you are bound to those
19 fiduciary obligations.

20 So, in that regard, I would say I
21 can't answer that legally, but I can -- I can
22 tell you that most of the customs that I speak
23 to in the industry stem from that.

24 Q. During the time that you operated the
25 fund of funds at Paradigm, would you agree that,

1 AMY B. HIRSCH

2 Q. And what about Kingdon?

3 A. I would imagine that -- I can't recall
4 precisely, but again, based on his strategy, it
5 would be unlikely that it would be a very high
6 Sharpe ratio because he has a lot of volatility.

7 Q. What about, did you ever look at --
8 it's not listed here, but D.E. Shaw?

9 A. I have looked at D.E. Shaw, yes.

10 Q. Are you familiar with what their
11 Sharpe ratios have been?

12 A. No, I don't recall what his Sharpe is.

13 Q. If we can flip to your Opinion II,
14 starting at paragraph 72.

15 A. I'm sorry, starting at 72?

16 Q. 72 on page 29.

17 Now, do I understand correctly that
18 these -- that Opinion II and then the
19 explanation that's in paragraphs 72 to 129 is,
20 in essence, your attempt to apply your Opinion I
21 to the facts of this case?

22 MS. HOANG: Objection.

23 A. Opinion II is directly related to the
24 Defendant Funds and the management company.

25 Q. And that's an attempt to apply kind of

1 AMY B. HIRSCH

2 the general discussion that you had in Opinion I
3 to the Defendant Funds?

4 MS. HOANG: Same objection.

5 A. It's on application of Opinion I. It
6 is, in some cases, outlining the differences
7 between what was industry practice and customs
8 and what occurred at the Defendant Funds and the
9 management company, and it's specific to the
10 books and records of the Defendant Funds and the
11 management company.

12 Q. Now, you say in paragraph 72, "I have
13 identified transfers of assets between the
14 Defendant Funds and between the Defendant Funds
15 and GCC that were a misuse of fund assets and
16 resulted in the commingling of assets."

17 Do you see that?

18 A. Yes, sir.

19 Q. What did you do to identify those
20 transfers?

21 A. In general, the approach, or
22 specifically for a specific --

23 Q. I'll start with your general approach.
24 What did you do to -- to, you know, form the
25 conclusion that you wrote in that sentence?

1 AMY B. HIRSCH

2
3 CERTIFICATE

4 STATE OF NEW YORK)

: ss

5 COUNTY OF NEW YORK)

6 I, Kathy S. Klepfer, a Registered
7 Merit Reporter and Notary Public within and
8 for the State of New York, do hereby
9 certify:

10 That AMY B. HIRSCH, the witness whose
11 deposition is herein before set forth, was
12 duly sworn by me and that such deposition is
13 a true record of the testimony given by such
14 witness.

15 I further certify that I am not
16 related to any of the parties to this action
17 by blood or marriage and that I am in no way
18 interested in the outcome of this matter.

19 In witness whereof, I have hereunto
20 set my hand this 18th day of June, 2015.

21
22 -----
KATHY S. KLEPFER, RPR, RMR, CRR, CLR